

NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA field installation having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify whether there were any audit findings.

(d) (1) Chapter 6 of the NASA Audit Followup Handbook identifies which contract audit reports are reportable semiannually to Code HC.

(2) Only trackable A-128 and A-133 audit reports involving the following shall be reported semiannually to Code HC—

(i) A significant management control issue; or

(ii) For an individual NASA award, either the lower of 10 percent or \$10,000 of the costs incurred in the period covered by the audit are questioned; or for institution-wide issues, the lower of 10 percent or \$10,000 of the total costs incurred involving Government funds for the period covered by the audit are questioned.

(e) (1) The resolution and disposition of contract audits is covered by Chapter 6 of the NASA Audit Followup Handbook.

(2) The resolution and disposition of A-128 and A-133 are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having an institution-wide impact are the responsibility of the cognizant Federal agency. OMB's January 6, 1986, **Federal Register** Notice (51 FR 552), titled "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Governments," provides cognizant agency assignments for OMB Circular A-128. For organizations subject to OMB Circular A-133, the cognizant agency is either assigned pursuant to OMB Circular A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions," or if not formally assigned, it is based on which Federal agency provided the largest amount of funds for the audited period. In such cases where NASA is the cognizant Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the "cognizant field installation," i.e., the field installation having the largest total award dollar amount for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each field installation having resolution

responsibility for the particular report to the OIG Center office within whose geographic area of responsibility the audited organization is located.

PART 1845—GOVERNMENT PROPERTY

1845.106-70 [Amended]

31. In section 1845.106-70, paragraph (e), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.405 [Amended]

32. In section 1845.405, paragraph (b), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)" and "Code IRD" is revised to read "Code IR".

1845.407 [Amended]

33. In section 1845.407, paragraph (a), "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.608-6 [Amended]

34. In section 1845.608-6, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.610-2 [Amended]

35. In section 1845.610-2, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

1845.7203 [Amended]

36. In section 1845.7203, "Supply and Equipment Management Office is revised to read "Logistics Management Office" and "Code JLE" is revised to read "Code JLG" in two occurrences.

1845.7205 [Amended]

37. In section 1845.7205, paragraph (f)(1), "Code JLE" is revised to read "Code JLG".

38. In section 1845.7205, paragraph (i), "Code JLE" is revised to read "Code JLG".

1845.7213 [Amended]

39. In section 1845.7213, paragraph (c)(1) introductory text, "Supply and Equipment Management Office (Code JLE)" is revised to read "Logistics Management Office (Code JLG)".

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

40. In section 1851.102, the first sentence of paragraph (b) is revised to read as follows:

1851.102 Authorization to use Government supply sources.

(a) * * *

(b) The contracting officer shall forward letters of authorization to the installation's Logistics Management Officer, Attention: Activity Address Code Coordinator, who will forward them to the Logistics Management Office, NASA Headquarters (Code JLG), for verification and transmittal to GSA. * * *

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PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.208-70, 1852.208-71, 1852.208-72, 1852.208-73, 1852.208-74, 1852.208-76, 1852.208-77, 1852.208-78, 1852.208-79, 1852.208-80, 1852.208-83 [Removed]

41. Sections 1852.208-70, 1852.208-71, 1852.208-72, 1852.208-73, 1852.208-74, 1852.208-76, 1852.208-77, 1852.208-78, 1852.208-79, 1852.208-80, and 1852.208-83 are removed.

1852.208-75 [Redesignated as 1852.241-70]

42. Section 1852.208-75 is redesignated as section 1852.241-70 and the introductory text is revised to read as follow:

1852.241-70 Renewal of Contract.

As prescribed in 48 CFR 1841.501(b), insert the following clause:

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.103 NASA acquisition of investigations.

43. In Appendix C to Appendix I of section 1870.103, Section II, paragraph A.3.a., "Office of Policy Coordination and International Relations, Code IRD" is revised to read "Office of External Relations, Code IR" and in paragraph A.3.d., "Code IRD" is revised to read "Code IR" and "Office of Policy Coordination and International Relations" is revised to read "Office of External Relations".

[FR Doc. 95-7612 Filed 3-28-95; 8:45 am]

BILLING CODE 7510-01-M

48 CFR Parts 1815, 1837 and 1852

RIN 2700-AB40

Revision to NASA FAR Supplement; Uncompensated Overtime

AGENCY: Office of Procurement, Analysis Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule sets forth the Agency's policy regarding the acceptability of uncompensated overtime (UCOT) in acquisition proposals. It establishes that UCOT provided by employees who are exempt from the Fair Labor Standards Act is neither encouraged nor discouraged, but that labor rates must be adjusted to account for any UCOT proposed. Further, any UCOT proposed must be supported by company policy, timekeeping and accounting systems, and the historical basis. The proposal evaluation will include a technical and cost risk assessment. A sample list of criteria to be considered during evaluation is included.

This final rule includes a solicitation provision for use in procurements estimated to exceed \$500,000. Its use is optional in procurements between \$100,000 and \$500,000. The solicitation provision sets forth the agency policy and specifies the type of information needed to support any proposed UCOT.

This coverage was generated in response to industry and internal NASA requests for a uniform UCOT policy within the Agency. The coverage will promote consistent treatment of UCOT proposals, without constraining contractors' prerogatives in deciding whether to propose UCOT.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Childs, Telephone: (202) 358-0454.

SUPPLEMENTARY INFORMATION:

Background

NASA published a proposed rule in 59 FR 9951, March 2, 1994, essentially the same as that being promulgated here. Based on a review of public comments on the proposed rule, only minor changes were made. Fourteen comments were received from eight sources:

Two commenters recommended expansion of the applicability of the proposed rule, by deletion of the phrase "in key technical positions" in the first sentence of 48 CFR 1815.608-72.

CONCUR—this change was accepted.

Three commenters recommended that the clause at 48 CFR 1852.237-72 include the policy statement that UCOT is neither encouraged nor discouraged. A fourth commenter expressed a similar concern. CONCUR—a preamble paragraph was added to address this in the clause, based on the policy in 48 CFR 1837.102(b).

Five commenters recommended a policy reversal, so as to either prohibit

bidding of UCOT or nullify any pricing advantage. NONCONCUR—it is not our intention to restrict offerors' options in developing their proposals.

The remaining comments addressed minor clarifications or editorial changes. Some editorial changes were made to better organize the coverage and correct typographical errors.

In addition, a new paragraph (b) is added in 48 CFR 1815.608-72, containing a list of sample criteria for NASA personnel to consider in evaluating UCOT in proposals.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule and assigned control number 2700-0080.

List of Subjects in 48 CFR Parts 1815, 1837 and 1852

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1837 and 1852 are amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 1815, 1837 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Section 1815.608-72 is added to read as follows:

1815.608-72 Uncompensated overtime.

(a) The contracting officer shall conduct a risk assessment of any proposal received for technical and professional services that includes unrealistically low labor rates, or uses a high level of uncompensated overtime

(as defined in the provision at 48 CFR 1852.237-72, Identification of Uncompensated Overtime). Such practices on the part of the contractor may jeopardize its ability to successfully perform contract requirements due, for example, to its inability to hire or retain qualified personnel. Such a risk assessment shall be performed as part of the technical evaluation and considered in proposal evaluation (see 48 CFR (FAR) 22.11 and 48 CFR 1837.102(b)).

(b) The risk assessment should consider factors such as—

(1) The number of hours that current employees have been accustomed to working, and the normal number of work hours for the local industry;

(2) The turnover rates for the firm and for the industry in the firm's geographical area;

(3) Whether employees involved in uncompensated overtime share directly in the firm's profits; e.g., through employee-ownership or a profit-sharing plan;

(4) Whether the contract period of performance is short, or whether uncompensated overtime will be used for only a relatively short period of time;

(5) Whether the firm uses approximately the same level of uncompensated overtime in its non-government business;

(6) Any potential for decline in quality or safety both during performance and in any deliverable produced; and

(7) The ability of the contractor to respond to an emergency requiring additional effort.

PART 1837—SERVICE CONTRACTING

3. Section 1837.102 is added to read as follows:

1837.102 Policy.

(a) To the maximum extent practicable, it is the policy of NASA to acquire services on the basis of the task to be performed rather than on a labor-hour basis.

(b) The use of uncompensated overtime (as defined in the provision at 48 CFR 1852.237-72, Identification of Uncompensated Overtime) is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) 22.11). The provision at 48 CFR 1852.237-72 requires offerors to identify uncompensated overtime hours and the effective hourly rate for all Fair Labor Standards Act-exempt personnel

included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 48 CFR 1815.608-72).

4. Section 1837.110 is revised to read as follows:

1837.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall obtain the Associate Administrator for Procurement's (Code HC) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

(b) The following provision applies to procurements under which professional and technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed.

(1) If the resulting contract is expected to exceed \$500,000, the contracting officer shall insert in the solicitation the provision at 48 CFR 1852.237-72, Identification of Uncompensated Overtime.

(2) If the resulting contract is expected to exceed \$100,000 but not exceed \$500,000, the contracting officer may insert in the solicitation the provisions at 48 CFR 1852.237-72, Identification of Uncompensated Overtime.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.237-72 is added to read as follows:

1852.237-72 Identification of Uncompensated Overtime.

As prescribed in 48 CFR 1827.110(b), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME

(APRIL 1995)

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

(a) *Definitions.* As used in this provision:

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for

purposes of computing uncompensated overtime hours.

Effective hourly rate is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20.00 per hour would be converted to an effective hourly rate of \$17.78 per hour [$(\$20.00 \times 40)$ divided by 45 = \$17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

[FR Doc. 95-7734 Filed 3-28-95; 8:45 am]

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DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 95-1]

Amendment to the Justice Acquisition Regulations (JAR) Regarding Career Development, Contracting Authority, and Responsibilities

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by revising policies and procedures for redelegation of authority for contractual actions of goods and services; revising regulations to set forth the Department of Justice system for selection, appointment, and termination of appointment of contracting officers; and incorporating the agency's policies and procedures regarding the

Procurement Career Management Program.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Part 2801

Government procurement.

Dated: March 21, 1995.

Stephen R. Colgate,
Assistant Attorney General for
Administration.

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. The heading of subpart 2801.6 is revised to read as follows:

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2801.601 is amended by revising paragraph (d) to read as follows:

2801.601 General.

* * * * *

(d) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational